

DEPARTMENT OF STATE REVENUE

Information Bulletin #55
Income Tax
October 2022
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(Replaces Bulletin #55, dated September 2001)

SUBJECT: Determination of Residence for Individuals Leaving Indiana for Employment in a Foreign Country

REFERENCES: [IC 6-3-1-11](#); [IC 6-3-1-12](#); [IC 6-3-4-4.1](#); [45 IAC 3.1-1-21](#) through 22.5

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SUMMARY OF CHANGES

Aside from nonsubstantive, technical changes, this bulletin has been changed to reflect updated guidance on domiciles and permanent places of residence found in the department's regulations, an update to the threshold amount for estimated payments, and an update to the extension period from 30 days to one month.

INTRODUCTION

The purpose of this bulletin is to briefly summarize the responsibilities for an individual who is working in a foreign country but still maintains residency and domicile in Indiana.

DEFINITIONS

The term "resident" means: (a) any individual who was domiciled in Indiana during the taxable year; (b) any individual who maintains a permanent place of residence in Indiana and spends more than 183 days of the taxable year in Indiana; (c) any estate of a deceased person defined in (a) or (b); or (d) any trust which has a situs in Indiana.

The term "permanent place of residence" means a building or structure where a person can live that the person maintains, whether the individual owns it or not, which is suitable for year-round use. However, a residence maintained by a person primarily for the purpose of obtaining an educational degree is not a permanent place of residence. If a person is under a guardianship or conservatorship, the individual maintains a permanent place of residence in Indiana if he or she satisfies the criteria above as a result of the guardian or conservator's acts.

The term "domicile" means the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. A person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

A person is domiciled in a state or other place until such time the person voluntarily takes affirmative action to become domiciled in another place. Once a person is domiciled in Indiana, that status is retained until such time as the person voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that a person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts presented in each individual case. A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one of the following:

- Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
- Voted in that state.
- Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.
- Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.
- Had a place of employment or business in that state.

A person may rebut this presumption through the presentation of substantial contrary evidence.

If a person's domicile is not resolved by the above criteria, the department may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:

- maintained a driver's license or government issued identification card;
- was registered to vote;
- registered a vehicle;
- claimed immediate family members as dependents who relied, in whole or in part, on the taxpayer for their support;
- assigned or maintained a mailing address;
- maintained bank accounts;
- maintained active membership in a religious, social, cultural, or professional organization;
- received professional services; and
- kept valuables or family heirlooms.

RESIDENT STATUS AND DOMICILE

You may be a resident of Indiana for income tax purposes even though you were living, working, or studying abroad during the taxable year. To determine your resident status for income tax purposes, you must consider where you were domiciled and where you maintained a permanent place of abode during the taxable year.

If you are a United States citizen domiciled in Indiana, and you go to a foreign country for a limited amount of time because of an assignment by your employer, or for study, research or any other purpose, you do not lose or change your Indiana domicile unless you can clearly show that you intend to remain in that foreign country permanently and that you do not plan to return to Indiana.

TAXABILITY OF INCOME EARNED IN A FOREIGN COUNTRY

If you are a United States citizen domiciled in Indiana while in a foreign country, you must file your Indiana individual income tax return as a resident, Form IT-40. As an Indiana resident, you are subject to tax on income you received from all sources, including income earned in a foreign country that was included in your federal adjusted gross income. If you are permitted a deduction or exclusion for foreign income, foreign housing, or other foreign-source income, Indiana will recognize those deductions or exclusions if they are allowed in determining your federal adjusted gross income.

If you are domiciled in Indiana and then go to a foreign country and clearly show your intent to establish your domicile outside of Indiana, you must file your Indiana individual income tax return as a part-year resident, Form IT-40PNR. As a part-year resident, you are subject to tax on all your income from all sources for the part of the year you were an Indiana resident, and on any business income from Indiana for the part of the year you were a nonresident of Indiana.

FOREIGN TAX CREDIT

If you are entitled to a credit for income taxes paid to a foreign country on your federal return, you may also be allowed a credit for Indiana income tax purposes. The computation of this credit is the same as computing the credit for taxes paid to other states. The credit is the lesser of: (a) an amount equal to the Indiana tax rate multiplied by the income subject to tax in both Indiana and the foreign country; or (b) the actual amount of tax paid to the foreign country. This credit cannot exceed your Indiana adjusted gross income tax.

In order to be allowed a credit for tax paid to a foreign country, you must attach or include a copy of Federal Form 1116 (Computation of Foreign Tax Credit) to your Indiana tax return if you filed a Federal Form 1116.

EXTENSION OF TIME TO FILE

If you are a United States citizen traveling, living or studying in a foreign country at the time your federal personal income tax is due, you qualify for an automatic two-month extension for filing your federal return. If you qualify for

this federal extension, you are automatically entitled to the same extension plus one month for filing your Indiana personal income tax return. You do not have to request or apply for the Indiana extension as long as you attach to or include a statement that you qualify for the federal extension with your Indiana return.

Also, if you receive an extension beyond the two-month period for filing your federal return, you are again automatically entitled to a similar extension for filing your Indiana return. Attach or include a copy of your approved federal extension to your Indiana return.

This is an extension of time to file and not an extension of time to pay. If a remittance is due, Form IT-9 (Indiana Department of Revenue Extension of Time to File), should be filed and payment made on or before the due date of the tax return.

COUNTY TAX

All Indiana residents are subject to county income tax. If you are an Indiana resident you must have an Indiana county as your county of residence, even though you may be in a foreign country at the time. The county tax is computed on Schedule CT-40 (County Tax Schedule for Indiana Residents) located in the Indiana available income tax booklet.

PAYMENT OF ESTIMATED TAX

A taxpayer who expects to owe \$1000 or more in Indiana adjusted gross income tax and/or \$1000 or more in county income tax after subtracting all credits against the tax, is required to pay estimated tax. If you are paying estimated tax for the first time, this can be filed online using the Indiana Taxpayer Information Management Engine (INTIME), the department's online e-services portal, by visiting intime.dor.in.gov. Otherwise, a printable copy of Form ES-40 can be found at in.gov/dor/tax-forms/. It must then be mailed to the address on the form. Once filed, you will receive the estimated income tax voucher booklet for the remaining installments.

A 10% penalty will be assessed for underpayment of estimated taxes. For further information, please see Income Tax Information Bulletin #3, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/income-tax-information-bulletins/.

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